

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JOHN MULLENIX
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-6
Case No. 67-4900

S.S.A. No.

Subsequent to issuance of Referee's Decision No. LA-12305, we assumed jurisdiction of the matter under section 1336 of the California Unemployment Insurance Code. The decision of the referee reversed a determination of the department which disqualified the claimant from receiving benefits for two weeks upon the ground that he, without good cause, failed to apply for suitable employment when notified by a public employment office.

STATEMENT OF FACTS

The claimant filed for benefits effective August 20, 1967. The claimant had worked as an order filler for a grocery company from 4 p.m. to 2:30 a.m. He hoped for daytime employment so he could have a more normal family life.

On August 24, 1967 the claimant was notified by the Department of Employment of an available job as order filler for a chain grocery warehouse at \$3.55 per hour, 6 p.m. to 3 a.m. daily, and on a 40-hour week basis.

The claimant testified to the pertinent parts of his conversation with the department representative:

"She said in my line of work, this was a job that she had, and then I asked her if she had anything that was in the daytime hours, and she said, No, this was all she

had in my line of work, because I told her I wanted something in the daytime if I could. That was all she said.

"She said: 'No. This is all I have.'"

The referee asked the claimant if the potential job was in the claimant's line of work.

"Apparently, yes, according to what she said. She said it was order filler ... and that is what I was doing"

The claimant was asked if he was informed that he would be disqualified if he failed to apply for the job.

"No, I wasn't. That is why I am here. There was nothing said to that effect at all. If I had known I was going to be disqualified, I would sure have gone."

On further examination by the department representative, the claimant testified:

". . . it has been so long ago it is hard to remember. I asked her if that was all--let me see--if that was--or if that was all she had, and she said, Yes, that was the only one in my line of work. Then I think I asked her to the effect if I had to take it or something. I don't remember now because it has been so long ago, but that ~~was~~ about all that was said."

The claimant concluded his testimony regarding the job possibility by stating that the department representative did not ask "Do you want it?", nor did he say he did not want the job - "I just said I preferred something in the daytime."

REASONS FOR DECISION

Section 1257(b) of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he, without good cause, refused to accept suitable

employment when offered to him, or failed to apply for suitable employment when notified by a public employment office.

Section 1258 of the code defines suitable employment as work in the individual's usual occupation or work for which he is reasonably fitted.

The work in question herein was in the claimant's usual occupation. There is no question but that it was suitable work under section 1258 of the code.

The instant case involves that portion of section 1257(b) which deals with the individual who, without good cause, fails to apply for suitable employment when notified by a public employment office.

In Benefit Decision No. 6427, we considered whether the claimant had failed to apply for suitable employment when notified by a public employment office. The claimant in that case was a university graduate who had been unemployed for some weeks. He was asked by a department representative if he was interested in work as a shipping clerk and he replied he was not -- he would like something with a future. The interviewer did not disclose any details of the job to the claimant because of his disinterest. The claimant was not informed that such work was suitable for him in view of the length of his unemployment and the difficulty of placing him in office work. The claimant testified that he had no idea that a job was being offered to him; that had it been he would not have refused a referral, and that he intended only to indicate a preference consistent with his educational background.

The question for us in Benefit Decision No. 6427 was whether the claimant was given a referral to suitable work by the department. We concluded that he had not been given such referral. In our opinion we stated:

"The claimant herein was not given any details with respect to the job in question, was not asked if he was interested in the job, but was only asked if he was interested in work as a shipping clerk. He was given no

opportunity to reject a referral to the particular job. We believe the claimant should not have been foreclosed from the opportunity to accept or reject a referral to a specific job opening merely because he indicated a disinterest in a type of work. We conclude that a referral to suitable work was not extended to the claimant.
. . ."

The issues in the instant case are:

1. Was the claimant aware that he was being given a referral to suitable work by the department representative.
2. Was there an obligation on the department representative to inform the claimant clearly that he was being given a referral to suitable work.

The evidence shows that the potential job was described adequately, and it is clear that the claimant recognized the job description as one which fell within his capabilities. The record is virtually silent, however, on the import of this recognition.

The claimant said he asked the department representative if there was anything in the daytime, as that was his preference, and the department interviewer replied merely that this was all she had in the claimant's line of work. Less affirmatively in the record was the claimant's testimony that he thought he asked if he had to take the referral, but even this was qualified: "I don't remember now because it has been so long ago."

The testimony shows only that the department representative outlined a job possibility to the claimant. He did not refuse but stated his wish for daytime work and was told there was none. The interview seemingly ended on this note or soon thereafter without further significant exchange. There is no indication that the department representative said "Will you apply for this job?" or that she regarded the claimant's inaction as a

refusal. The testimony is neutral in character and non-persuasive for other than a neutral conclusion.

We conclude that the evidence in the case does not establish that the claimant realized he had refused a referral to a suitable job under the provisions of section 1257(b) of the code. The record shows he had indicated merely a preference for daytime work.

Did the department representative then have the responsibility to insure that the claimant was informed that he was, in fact, being given a referral to suitable work? We believe she did.

There is no statutory obligation that the department go beyond the steps taken in this case. However, in a situation of this type, it is the department representative who has the superior knowledge. The department representative could have eliminated all misunderstanding by asking the claimant directly if he refused the referral outlined or would apply for the employment described. She did not do so.

The claimant was a layman, and, while under a statutory obligation to seek employment in good faith if he was to remain eligible for unemployment insurance benefits, cannot be penalized simply because he asked if daytime work was available.

We have been reluctant to impose sanctions upon a claimant when it is clear that he was uninformed of his status, or, because of honest mistake of fact, acted through misunderstanding.

In Benefit Decision No. 6427, discussed above, the claimant had insufficient information given him to be bound by his statement that he would prefer work other than that of shipping clerk.

Similarly, here, the claimant was without sufficient knowledge to realize that the circumstances amounted to a

refusal of a referral, and such lack of knowledge was because of the department's failure to so advise him.

We conclude, therefore, that the department's representative had the responsibility to fully and clearly inform the claimant that he may have refused a referral to suitable work and that a determination would be made by the department. The claimant had the right to be informed sufficiently so that he might make an intelligent choice -- to accept the referral or refuse it.

A statutory function of the department is to attempt to return claimants to productive activity as promptly as possible, thus taking them off the unemployment insurance rolls. The claimant's statement that he would have accepted a referral had he known he would be disqualified surely points the way for the department. It must present the claimant with a clear choice, and a simple question forcing him to make it would suffice. In this case, had the claimant accepted the referral, he may have been employed. Had he not, this case in its present form and with the problems it poses for both this board and the department would not have come before us.

Therefore, it is our opinion that the department representative had a responsibility to require the claimant to take a clear-cut position of accepting or refusing the referral. We believe, too, that she had the responsibility of advising the claimant that he risked disqualification if it were determined he had refused referral to suitable employment. In this connection, we feel the warning contained in the Handbook for Claimants is not sufficient. When a claimant expresses a simple preference, we think he would be justified in believing that his preference was acceptable if he was not advised to the contrary. No reasonable person in these circumstances could know with certainty that he had refused a referral to suitable employment, let alone that he risked disqualification.

Accordingly, the decision of the referee will be affirmed but for the reasons stated in this decision.

DECISION

The decision of the referee is affirmed. The claimant is not disqualified for benefits for two weeks beginning August 20, 1967 under section 1257(b) of the code.

Sacramento, California, April 3, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

CLAUDE MINARD

ROBERT W. SIGG

JOHN B. WEISS